

LEGAL

Military law consists of the statutes governing the Military Establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the Military Establishment, and thereby to strengthen the national security of the United States.

This chapter contains information about the exercise of military jurisdiction through investigations.

ADMINISTRATIVE INVESTIGATIONS (FACT-FINDING BODIES)

The Judge Advocate General is responsible for the administration, supervision, collection, storage, and release of investigations conducted by administrative fact-finding bodies under the provisions of the *Manual of the Judge Advocate General*, (JAGMAN), JAGINST 5800.7C.

An officer in command is responsible for initiating investigations of incidents occurring within his or her command or involving his or her personnel. The reporting command of a member who is injured or dies during permanent change of station (PCS) transfer should make sure appropriate investigations are conducted. If a command believes that its investigation of an incident is impractical, it may request another command to conduct the investigation.

Administrative fact-finding bodies collect and record information. Their reports are advisory. Their opinions, when expressed, do not constitute final determinations or legal judgments, and their recommendations, when made, are not binding upon convening or reviewing authorities.

The primary function of an administrative fact-finding body is to search out, develop, assemble, analyze, and record all available information about the matter under investigation.

The convening authority prescribes the time period an administrative fact-finding body has to submit its investigation. This period should not normally exceed 30 days from the date of the convening order. For good cause, however, the convening authority may extend the period. Requests and authorizations for extensions must be included as enclosures to the investigations.

The convening authority and subsequent reviewers have 30 days to review the investigation. In death cases, the period for review is 20 days. Noncompliance with these time requirements must be explained in the endorsement of the deviating command.

TYPES OF ADMINISTRATIVE FACT-FINDING BODIES

There are three types of administrative fact-finding bodies:

- Courts of inquiry
- Fact-finding bodies required to conduct hearings
- Fact-finding bodies not required to conduct hearings

The type of fact-finding body convened is determined by the purposes of the inquiry, relative seriousness of the subject under inquiry, complexity of factual issues involved, time allotted for completion of the investigation, and the nature and extent of powers required to conduct the investigation.

Court of Inquiry

A court of inquiry is convened by persons authorized to convene general courts-martial or so designated by the Secretary of the Navy. (See Article 135, *Uniform Code of Military Justice* [UCMJ].) A court of inquiry consists of at least three commissioned officers as members and appointed legal counsel for the court. A court of inquiry is convened by a written appointing order. Testimony is taken under oath and all open proceedings are recorded verbatim, except arguments of counsel, regardless of whether it is directed in the appointing order. Hearing procedures are used. Persons subject to the UCMJ whose conduct is subject to inquiry must be designated parties. Upon their

request to the court, persons subject to the UCMJ or employed by the Department of Defense who have a direct interest in the subject of inquiry must be designated parties. The court of inquiry has the power to subpoena civilian witnesses.

Fact-Finding Body Required to Conduct a Hearing

A fact-finding body required to conduct a hearing is convened by persons authorized to convene general or special courts-martial. It consists of one or more commissioned officers and should have legal counsel appointed for the proceedings. It is convened by a written appointing order. The appointing order should direct that all testimony be taken under oath and/or all proceedings recorded verbatim. A hearing procedure is used. Persons whose conduct is subject to inquiry or who have a direct interest in the subject of the inquiry may be designated parties by the convening authority in the appointing order. Additionally, the convening authority may authorize the fact-finding body to designate parties during the proceedings. A fact-finding body to conduct a hearing does not possess the power to subpoena witnesses, unless convened under Article 139, UCMJ, and JAGINST 5800.7C, chapter IV.

Fact-Finding Body Not Required to Conduct a Hearing

A fact-finding body not required to conduct a hearing is convened by a person authorized to convene general, special, or summary courts-martial, or to impose disciplinary punishment under Article 15, UCMJ, including an officer in charge or an officer who holds delegation of authority for such purpose from the convening authority. It consists of one or more persons within the Department of the Navy and may have legal counsel appointed for the proceedings. It is convened by a written appointing order. Ordinarily, a fact-finding body not required to conduct a hearing is not directed to take testimony under oath or to record testimony verbatim. However, it may collect evidence by personal interviews, telephone inquiries, and correspondence. It may not designate any person as a party to the investigation, nor does it possess the power to subpoena witnesses.

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT

A person subject to the code who is required to give warnings under Article 31 may not interrogate or request any statement from an accused or a person suspected of an

offense without first complying with the following actions:

- Informing the accused or suspect of the nature of the accusation
- Advising the accused *or* suspect that the accused or suspect has the right to remain silent
- Advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial

Interrogation includes any formal or informal questioning that either an incriminating response is sought or is a reasonable consequence of such questioning. If a person chooses to exercise the privilege against self-incrimination or the right to counsel under the Military Rule of Evidence (Mil. R. Evid.) 305, questioning must cease immediately.

After receiving applicable warnings under Mil. R. Evid. 305, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT			
FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE
<p style="text-align: center;">RIGHTS</p> <p>I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:</p> <p>(1) I am suspected of having committed the following offense(s): _____</p> <p>(2) I have the right to remain silent; ----- <input type="checkbox"/></p> <p>(3) Any statement I do make may be used as evidence against me in trial by court-martial; ----- <input type="checkbox"/></p> <p>(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and- <input type="checkbox"/></p>			

Figure 11-1. Suspect's Rights Acknowledgement/Statement, NAVJAG 5810/10.

intelligently. A written waiver is not required. The accused or suspect must acknowledge affirmatively that he or she understands the right involved, affirmatively decline the right to counsel, and affirmatively consent to making a statement.

The Suspect's Rights Acknowledgement/ Statement, NAVJAG 5810/10, (fig. 11-1) is a suggested format that may be used by investigative personnel in cases in which suspects desire to waive their rights concerning self-incrimination and to make statements. This format is designed as a guide and its use is not mandatory.

RECORD OF THE FACT-FINDING BODY

The courts of inquiry and administrative fact-finding bodies required to conduct a hearing must keep a written record of their proceedings that will be authenticated by the signature of the investigating officer or president. In the case of a minority report it must be signed by the members, if available, of the fact-finding body acknowledging the report to be true.

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. - ☐

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, ☐

(1) I expressly desire to waive my right to remain silent; ----- ☐

(2) I expressly desire to make a statement; ----- ☐

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; ----- ☐

(4) I expressly do not desire to have such a lawyer present with me during this interview; and ----- ☐

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. ----- ☐

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

Figure 11-1.Suspect's Rights Acknowledgement/Statement, NAVJAG 5810/10-Continued.

The statement which appears on this page (and the following _____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

Figure 11-1.Suspect's Rights Acknowledgement/Statement, NAVJAG 5810/10-Continued.

When the record cannot be authenticated by the investigating officer or president, it should be signed by counsel to the investigation.

The record of proceedings of a fact-finding body should include the original appointing order and any other communications from the convening authority. It should contain the verbatim testimony of all witnesses, all exhibits received in evidence by the fact-finding body, and all proceedings of the investigation except that, in the discretion of the fact-finding body, arguments presented on behalf of the government and any party to the inquiry maybe summarized. A copy of the findings of fact, opinions, and recommendations should be prefixed to the record. (See example in JAGINST 5800.7C.)

The record of proceedings, together with the number of complete copies required by the circumstances, should be forwarded to the convening authority.

If at anytime during the proceedings an individual is requested by a government representative to supply personal information, compliance with the Privacy Act

is mandatory. The record of proceedings must reflect compliance with the Privacy Act. JAGMAN, appendix A-2-a, should be used.

Because of wide circulation of reports of investigation, classified information should be omitted unless inclusion is essential. When classified matter is included in the investigative report, the report should be assigned classification of the highest subject matter contained therein. Encrypted versions of messages should not be included or attached to investigative reports where the content or substance of such message is divulged.

Investigative reports for an administrative fact-finding body not required to conduct a hearing should be submitted in letter form. Normally, the report will consist of a preliminary statement, findings of fact, opinions, recommendations, and enclosures. (See the example in JAGINST 5800.7C, appendix A-2-e.)

REPORT OF OFFENSE

Any person may report an offense subject to trial by court-martial. Ordinarily, any military authority who receives a report of an offense should forward as soon as possible the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise. Upon receipt of a report, the immediate commander of a suspect should refer to Rules for Courts-Martial (R.C.M.) 306 for initial disposition.

INITIAL DISPOSITION

Each commander has the discretion to dispose of offenses by members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld.

Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition listed in R.C.M. 306. The disposition decision is one of the most important and difficult decisions facing a commander. Many factors must be taken into consideration and balanced, including, to the extent practical, the nature of the offenses, any mitigating or extenuating circumstances, the character and military service of the accused, any recommendations made by subordinate commanders,

the interests of justice, military exigencies, and the effect of the decision on the accused and the command. The goal should be a disposition that is warranted, appropriate, and fair.

Within the limits of the commander's authority, a commander may take the following actions to initially dispose of a charge or suspected offense:

No action. A commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed.

Administrative action. A commander may take or initiate administrative action, in addition to or instead of other action taken under R.C.M. 306, subject to regulations of the Secretary concerned. Administrative actions include corrective measures, such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above.

Nonjudicial punishment. A commander may consider the matter pursuant to Article 15, nonjudicial punishment.

Disposition of charges. Charges may be disposed of according to R.C.M. 401.

Forwarding for disposition. A commander may forward a matter concerning an offense, or charges, to a superior or subordinate authority for disposition.

National security matters. If a commander not authorized to convene general courts-martial finds that an offense warrants trial by court-martial, but believes that trial would be detrimental to the prosecution of a war or harmful to national security, the matter should be forwarded to the general court-martial convening authority for action under R.C.M. 407(b).

PREFERRAL OF CHARGES

Any person subject to the code may prefer charges. No person may be ordered to prefer charges if that person is unable to make truthfully the required oath. A person who has been the accuser or nominal accuser may not also serve as the convening authority of a general or special court-martial to which the charges are later referred. However, a summary court-martial convening authority is not disqualified by being the accuser. Charges may be preferred against a person subject to trial court-martial at anytime but should be preferred without unnecessary delay.

A person who prefers charges must sign the charges and specifications under oath before a commissioned officer of the armed forces authorized to administer oath and state that the signer has personal knowledge of or has investigated the matters set forth in the charges and specifications and that they are true in fact to the best of that person's knowledge and belief.

CHARGE SHEET

The format of charges and specifications is used to allege violations of the UCMJ on the Charge Sheet, DD

Form 458. The charge sheet consists of five sections. Refer to figures 11-2A and 11-2B as we discuss each section in the following paragraphs.

SECTION I - PERSONAL DATA

This section identifies the accused and provides personal information from the accused's service record. Any type of pretrial restraint of the accused is identified here also.

SECTION II - CHARGES AND SPECIFICATIONS

This section contains the formal written accusation against the accused in the form of charges and

CHARGE SHEET					
I. PERSONAL DATA					
1. NAME OF ACCUSED (Last, First, MI) James, Reuben J.		2. SSN 111-11-1111		3. GRADE OR RANK PFC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION Co A, 1st Battalion, 61st Inf Bde, Fort Blank, MO				6. CURRENT SERVICE	
				a. INITIAL DATE 1 April 1983	b. TERM 3 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED 1 August 1984
a. BASIC \$500	b. SEA/FOREIGN DUTY None	c. TOTAL \$500	Restriction		
II. CHARGES AND SPECIFICATIONS					
10. CHARGE: I VIOLATION OF THE UCMJ, ARTICLE 86					
SPECIFICATION: In that Private First Class Reuben J. James, U.S. Army, Company A, 61st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did, on or about 15 July 1984, without authority, absent himself from his unit, to wit: Company A, 1st Battalion, 61st Infantry Brigade, located at Fort Blank, Missouri, and did remain so absent until on or about 30 July 1984.					
Charge II: Violation of the UCMJ, Article 112a					
Specification: In that Private First Class Reuben J. James, U.S. Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did at Fort Blank, Missouri, on or about 12 July 1984, wrongfully possess 10 grams of marijuana.					
III. PREFERRAL					
11a. NAME OF ACCUSER (Last, First, MI) Richards, Jonathan E.		b. GRADE Captain		c. ORGANIZATION OF ACCUSER Co A, 1st Bn, 61st Inf Bde	
d. SIGNATURE OF ACCUSER <i>Jonathan E. Richards</i>				e. DATE 1 August 1984	
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>1st</u> day of <u>August</u> , 19 <u>84</u> , and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.					
Will M. Wilson		61st Bn, 1st Inf Bde			
Typed Name of Officer		Organization of Officer			
Captain		Adjutant			
Grade		Official Capacity to Administer Oath (See R.C.M., 887(b)—must be commissioned officer)			
<i>Will M. Wilson</i>					
Signature					

DD FORM 458
84 AUG

EDITION OF OCT 68 IS OBSOLETE.

Figure 11-2A. Charge Sheet, DD Form 458, front.

2. On 2 August, 19 84, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

Jonathan E. Richards
Typed Name of Immediate Commander
 Co A, 1st Bn, 61st Inf Bde
Organization of Immediate Commander
 Captain
Grade
Jonathan E. Richards
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1100 hours, 2 August, 19 84 at 1st Battalion, 1st Inf Brigade
Designation of Command or
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

Will M. Wilson
Typed Name of Officer
 Captain
Grade
Will M. Wilson
Signature

FOR THE COMMANDER
 Adjutant
Official Capacity of Officer Signing

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>1st Infantry Brigade</u>	b. PLACE <u>Fort Blank, Missouri</u>	c. DATE <u>7 August 1984</u>
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Referred for trial to the special court-martial convened by CMCO number 12 dated
1 August, 19 84, subject to the following instructions:² None

By Carl E. Nevins of
Command or Order
 Carl E. Nevins
Typed Name of Officer
 Colonel
Grade
Carl E. Nevins
Signature
 Commander, 1st Inf Brigade
Official Capacity of Officer Signing

15. On 8 August, 19 84, I caused to be served a copy hereof on (and/or) the above named accused.
 Hamilton Burger
Typed Name of Trial Counsel
 Captain, JAGC
Grade or Rank of Trial Counsel
Hamilton Burger
Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
 2 - See R.C.M. 601(e) concerning instructions. If none, so state.

Figure 11-2B.-Charge Sheet DD Form 458, back.

specifications. The charge identifies by number the UCMJ article that has allegedly been violated. The specification provides alleged facts concerning the violation (the where, when, what, and how).

Charges

A charge states the article of the code, law of war, or local penal law of an occupied territory that the accused is alleged to have violated. The particular subdivision of an article (for example, Article 118(1)) should not be included in the charge. When there are numerous infractions of the same article, there will be

only one charge, but several specifications thereunder. There may also be several charges, but each must allege a violation of a different article of the code.

If there is only one charge, it is not numbered. When there is more than one charge, each charge is numbered by a Roman numeral. Charges preferred after others have been preferred are labeled additional charges and are also numbered with Roman numerals, beginning with I if there is more than one additional charge. These ordinarily relate to offenses not known at the time or committed after the original charges were preferred. Additional charges do not require a separate trial if

incorporated in the trial of the original charges before arraignment.

When charges are drafted, an offense specially defined by Articles 81 through 132 may not be alleged as a violation of Article 134. In the case of a person subject to trial by general court-martial for violations of the law of war, the charge should be Violation of _____, _____ referring to the local penal law of the occupied territory. Ordinarily persons subject to the code should be charged with a specific violation of the code rather than a violation of the law of war.

Specifications

A specification should be brief but complete. It should be a plain, concise, and definite statement and must contain all the following essential facts constituting the offense charged:

- Rate of accused
- Name of accused
- Branch of service of accused
- Unit of accused
- Time of alleged offense based on a 24-hour clock
- Place of alleged offense
- Statement of facts constituting the alleged offense

A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication. No particular format is required. Detailed instructions on drafting specifications can be founded in the *Manual for Courts-Martial, United States*, 1984, under R.C.M. 307(c)(3).

If there is only one specification under a charge, it is not numbered. When there is more than one specification under any charge, the specifications are numbered in Arabic numerals. The term *additional* is not used in connection with the specifications under an additional charge.

Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification should state only one offense. A specification may name more than one person as an accused if each person so named is believed by the accuser to be a principal in the offense that is the subject of the specification.

SECTION III - PREFERRAL

This section contains the identification of the accuser, the signature of the accuser, the identification of the officer administering the oath to the accuser, and the signature of the officer administering the oath.

The accuser must be a person who has knowledge of the alleged offenses and must be a person who is subject to the UCMJ also. Normally, the officer who conducts the preliminary investigation is the one who signs and swears to the charges as the accuser. Article 136 of the UCMJ specifies what officers are authorized to administer oaths to accusers.

This section is continued on the reverse of the charge sheet with the date the accused was informed of the charges and identification and signature of the person informing the accused. The immediate commander of the accused should cause the accused to be informed of the charges preferred against the accused and the name of the person who preferred the charges and of any person who ordered the charges to be preferred, if known, as soon as possible.

SECTION IV - RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

Immediately upon receipt of sworn charges, an officer exercising summary court-martial jurisdiction over the command should cause the hour and date of receipt to be entered on the charge sheet. This date is important. This signature, with the exact hour and date of receipt, is necessary to fix the time period of the statute of limitations. If an offense is committed more than 2 years (3 years for some crimes) before receipt of charges by the officer having court-martial jurisdiction over the accused, the member may not, as a rule, be tried for that offense. There are a few extremely serious offenses for which there is no statute of limitations. Article 43, UCMJ, details the rules applying to statute of limitations.

SECTION V - REFERRAL: SERVICE OF CHARGES

This section is endorsed by the convening authority's signature. The purpose of this block is to order a particular court (summary, special, or general) to try the case and to provide the court with specific instructions. Although the endorsement should be completed on all copies of the charge sheet, only the original must be signed. The signature maybe that of a person acting by the order or direction of the convening authority. In such a case the signature element must reflect the signer's authority.

If the only officer present in a command refers the charges to a summary court-martial and serves as the

summary court-martial under R.C.M. 1302, the endorsement should be completed with the additional comment, "Only officer present in the command."

The summary court-martial officer, or the trial counsel in a special court-martial, will provide the accused with a copy of the charge sheet. The date this is done is the last entry on the charge sheet. This date is used to determine the earliest date that the accused may be tried. An accused may not be tried by a special court-martial within 3 days after being served a copy of the charges, unless the accused waives this right. While this right does not exist in a summary court-martial, the accused should be granted adequate time to prepare a defense.

If, for any reason, charges are referred to a court-martial different from that to which they were originally referred, the new referral is ordinarily made by a new endorsement attached to the original charge

sheet. The previous endorsement should be lined out and initialed by the person signing the new referral. The original endorsement should not be obliterated.

CENSURE

Censure is a statement of adverse opinion or criticism of an individual's conduct or performance of duty expressed by a superior in the member's chain of command. Censure may be punitive or nonpunitive. Admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition. Procedures for issuance of punitive or nonpunitive letters are contained in JAGINST 5800.7C.

The omission of the word *private* preceding *admonition* or *reprimand* in Article 15, UCMJ, does not

NONPUNITIVE LETTER OF CAUTION	
	Date _____
From: Commander Service Force, U.S. Atlantic Fleet	
To: Ensign _____, SC, U.S. Navy/3100	
Via: (1) (2)	
Subj: NONPUNITIVE LETTER OF CAUTION	
Ref: (a) Report of investigation into discrepancies in the the ship's store returns for the first quarter of of fiscal year 19__ in USS _____ (____) (b) R.C.M. 306, MCM 1964 (c) JAGMAN 0105	
1. Reference (a) is the record of an investigation by _____ to inquire into certain discrepancies in the ship's store returns for the first fiscal year 19__ in USS _____.	
2. (Here insert a precise statement of the relevant events and circumstances for which the letter of caution is issued.) From the foregoing, it is apparent that you performed your duties in a careless manner. Such carelessness contributed to the improper operation of the ship's store in USS _____. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).	
3. This letter, being nonpunitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater care in the performance of your duties in order to measure up to the high standard of performance of duty required of all officers in the Service Force. Commander Service Force, U.S. Atlantic Fleet, trusts that the instructional benefit that you will receive from the experience will cause you to become a more proficient naval officer.	
(Signature)	
FOR OFFICIAL USE ONLY (WHEN FILLED IN)	

Figure 11-3.-Nonpunitive letter of caution.

constitute authority to commanding officers (COs) to issue public reprimands that are looked upon with disfavor by the Department of the Navy.

NONPUNITIVE

A nonpunitive letter is not considered punishment, rather to remedy a noted deficiency in conduct or performance of duty (fig. 11-3). A nonpunitive letter will be kept a personal matter between the member and the superior issuing the nonpunitive letter. Other than secretarial letters of censure (see JAGINST 5800.7C), the letter may not be forwarded to the Chief of Naval Personnel or the

Commandant of the Marine Corps, quoted in or appended to fitness reports, included as enclosures to investigations pursuant to the *Manual of the Judge Advocate General* or to other investigations, or otherwise included in official departmental records of the recipient.

PUNITIVE

A punitive letter is issued as nonjudicial punishment or as the result of a sentence by court-martial (fig. 11-4). In the case of commissioned officers and warrant officers, punitive letters given as nonjudicial punishment must be administered in writing. When

PUNITIVE LETTER OF REPRIMAND	
	Date _____
From: Commander Cruiser-Destroyer Force, U.S. Atlantic Fleet	
To: Lieutenant _____, U.S. Navy, _____/1100	
Via: (1) (2)	
Subj: PUNITIVE LETTER OF REPRIMAND	
Ref: (a) Report of investigation of collision between USS _____ (_____) and SS _____ that occurred on ____ April 19 ____ (b) UCMJ Art. 15 (c) Par. 5 of Part V, MCM, 1984 (d) JAGMAN 0114	
1. Reference (a) is the record of an investigation convened by Commander Cruiser-Destroyer Force, U.S. Atlantic Fleet, to inquire into the collision between USS _____ (_____) and SS _____ on ____ April 19 ____ . The collision occurred in the Atlantic Ocean about 60 miles east of Norfolk, Virginia. You were a party to the investigation and were accorded your rights as such. (As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to refuse imposition of nonjudicial punishment and you have elected to accept nonjudicial punishment.)	
3. Your actions clearly show that you were derelict in the performance of your duties as Officer of the Deck, USS _____, on the morning of ____ April 19 ____ in that you negligently failed to:	
a. Maintain USS _____ on a safe course as required by U.S. Navy Regulations, 1990.	
b. Employ all means and devices available to you for detecting and avoiding danger from collision as required by USS _____ Standing Night Orders and U.S. Navy Regulations, 1990.	
c. Inform your commanding officer when you made a course and speed change at about 6 minutes before the collision as required by U.S. Navy Regulations, 1990.	
4. Pursuant to references (b), (c), and (d) you are hereby reprimanded for your negligence in the performance of duty as set forth above.	
(Here insert final paragraphs prescribed by 0114f(3)(d).)	
(Signature)	
FOR OFFICIAL USE ONLY (WHEN FILLED IN)	

Figure 11-4. Punitive letter of reprimand.

imposed upon enlisted personnel as nonjudicial punishment, punitive letters may be either written or oral. Punitive letters issued to enlisted personnel in execution of a court-martial sentence must be in writing.

Unless withdrawn or set aside by higher authority upon appeal, punitive censure letters become part of the official service record of the member to whom they are addressed. The issuance of a punitive letter and the facts of the underlying offenses may be mentioned in the member's fitness report or enlisted evaluation and used to support a detachment for cause proceeding, relief of command, or any other administrative action on the part of the service concerned.

MISCONDUCT AND LINE OF DUTY

Cases of injury resulting in loss of time from duty for less than 24 hours require no investigative report by a fact-finding body unless such report is required for a different reason as listed in the following paragraphs.

Cases of injury resulting in loss of time for more than 24 hours, but not likely to result in permanent disability, or in the case of injury resulting from enemy action even if likely to result in permanent disability, require no investigative report by a fact-finding body if both medical officer and CO are of the view that the injury was incurred in line of duty without misconduct on the part of the member and if there are no other circumstances as listed in the following paragraphs that require an investigative report. The pertinent factual and medical details are recorded in the health or dental record of the individual.

In cases in which an investigative report is not required, a preliminary investigation may have to be made so that the CO can determine the line of duty and misconduct status.

Cases of injury that may result in permanent disability require an investigative report. However, if the medical officer and CO are of the view that the injury was incurred in line of duty without misconduct on the part of the injured member, and if there are no other circumstances as listed in the following paragraphs that require an investigative report, the case is reported by an Injury Report, NAVJAG 5800/15. The two-page form is filled out by the medical officer and the CO and then forwarded via the officer exercising general court-martial jurisdiction to the Judge Advocate General.

Cases of injury require an investigative report by a fact-finding body when the following circumstances occur:

- Loss of time from duty exceeds 24 hours and the injury may have been incurred due to misconduct of the member or not in the line of duty.

- The injury resulted from enemy action under circumstances suggesting misconduct of the member or not in line of duty.

- The injury resulted in death. (The Death Report form may be used to report the circumstances when the medical officer and CO are of the view that the death was incurred in the line of duty without misconduct, not apparent suicide, or did not occur as the result of enemy action.) However, while an investigative report is required, the findings of fact are not followed by opinions as to line of duty or misconduct.

- The injury was incurred under unusual or peculiar circumstances.

- The injury causes an adverse reflection on the conduct or performance of members of the naval service or connected therewith.

- The injury was incurred by members of the Naval Reserve or Marine Corps Reserve en route to or from a period of active duty, training duty, or an inactive duty training (drill) period.

- Claims are possible for or against the government under chapters XX through XXIII of the *JAG Manual*.

- There is any question of the mental responsibility or mental capacity of the injured party.

- Convening of higher authority determines that the best interests of the naval service or the individual would be served by an investigative report.

In any formal investigation that might possibly result in an opinion of misconduct or not in line of duty, the injured person is designated a party and accorded rights.

In any informal investigation, if the convening authority has substantial doubts that the injury was incurred in line of duty or not as the result of misconduct, then the convening authority must afford the member a hearing.

Any adverse finding as to misconduct and line of duty is never applied as a punitive measure. Any disciplinary action is taken independently of such

determination. In fact, a favorable finding does not always mean that disciplinary action will not be taken.

MISCONDUCT

Ordinary negligence or carelessness is not misconduct. Even when an act violates law, regulation or order, or is engaged in while intoxicated, the act in question does not necessarily constitute a basis for a misconduct determination. Misconduct means intentionally wrongful conduct or gross negligence. To support a fact-finding body's opinion of misconduct, the wrongful conduct must be found to have been a proximate cause of the injury or disease; that is, the misconduct must have directly caused injury or disease that otherwise would not have occurred. Furthermore, the wrongful conduct must be such that it could have been reasonably foreseen that injury or disease might result. If the injury or disease was caused by something not reasonably foreseeable at the time the act of apparent misconduct was committed, the act may not be considered as a proximate cause of the injury or disease.

Conjecture, guesswork or inference is not enough for a finding of misconduct. Until found otherwise, it is always presumed that injury or disease is not the result of misconduct. There must be clear and convincing evidence that the injury or disease is the proximate result of the person's misconduct.

Thus, in summary, injury or disease, in order to support an opinion of misconduct, must have the following characteristics:

- It must be intentionally incurred by wrongful conduct or result from gross negligence.
- It must be the proximate result of the member's action.
- It must have been reasonably foreseeable as the result of the act.

LINE OF DUTY

Whether or not misconduct is involved becomes an integral part of the line of duty determination. For instance, if it is found that misconduct is involved, the act cannot have been committed in the line of duty. Conversely, if the investigating body gives as its opinion that a particular act was done in the line of the duty, it may not at the same time say that misconduct was involved.

An act maybe done not in the line of duty, but not necessarily as a result of misconduct. If a person is

innocently injured in a traffic accident ashore, for instance, after having been on unauthorized absence for several days, the finding would probably be not in line of duty (since he or she was on unauthorized absence that exceeded 24 hours), but not due to own misconduct (since the injury was certainly not intentional or through gross negligence).

The determination is always not in line of duty if the injury or disease is found to have been incurred under the following circumstances:

- As a result of misconduct.
- While avoiding duty by deserting the service; while absent without leave and such absence materially interfered with the performance of required military duties; there is a rebuttable presumption for or against such material interference dependent on whether the unauthorized absence exceeded 24 hours or not, respectively. NOTE: The element of material interference is inapplicable in regard to physical disability separation and retirement benefits so that a disability incurred during desertion or unauthorized absence of any duration will result in ineligibility for those benefits.
- While confined under sentence of general court-martial involving an unremitted dishonorable discharge.
- While confined under sentence of civil court following conviction of a felony.

RELATIONSHIP BETWEEN MISCONDUCT AND LINE OF DUTY

Misconduct can never be in line of duty. Hence, a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that member's injury was incurred not in line of duty. It is permissible, however, to find that an injury was incurred not as a result of misconduct and not in line of duty. As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously, the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of his or her required military duties, a finding of not in line of duty must result.

A fact-finding body can arrive at only one of the possible combinations of findings as follows:

- In line of duty and not due to the member's own misconduct
- Not in line of duty and not due to the member's own misconduct
- Not in line of duty and due to the member's own misconduct

DEATHS

In cases of death, a fact-finding body should not express opinions concerning the misconduct or line of duty status of an individual in the report of investigation of the death or in any endorsement thereon. However, eligibility for payment of certain federal benefits that may be due survivors is determined by the Department of Veterans Affairs.

UNAUTHORIZED ABSENCE AND DESERTION

The term *absentee* describes any member not administratively classified a deserter who is absent without authority from his or her unit, organization, or other place of duty.

An absentee will be declared a deserter under the following circumstances:

- The facts and circumstances of absence, without regard to the length of absence, indicate that the member may have committed the offense of desertion as defined in Article 85 of the UCMJ and Part IV of the *Manual of Courts-Martial, United States, 1984*.
- The member has been absent without authority for 30 consecutive days.
- The member is absent without authority, without regard to the length of absence, and has gone to, or shown intention of going to, any foreign country, or remains in any foreign country and requests or accepts any type of asylum or residence permit from that country or any of its governmental agencies.

Absentees may not be declared deserters when their absence is determined to be unintentional and the circumstances surrounding the absence are beyond their control, such as civil arrest and confinement, hospitalization, or other unusual circumstances. Parent commands are responsible for monitoring a member's status while confined or hospitalized.

Every practical effort must be made by all concerned to locate and return absentees and deserters

as quickly as possible. Parent commands must make a vigorous effort to investigate circumstances surrounding absences and to expedite appropriate notification procedures. The parent command must prepare a Deserter/Absentee Wanted by the Armed Forces, DD Form 553 (figs. 11-5A and 11-5B), including any information on the form that will assist in locating and apprehending a deserter. The DD Form 553 is submitted to the Chief of Naval Personnel (PERS 843).

UNAUTHORIZED ABSENTEES

When a member is absent from an assigned duty station, commands must list the member on the daily absentee report prescribed by *U.S. Navy Regulations* and provide a copy of the report to the disbursing office or appropriate personnel support activity detachment.

The following actions (not all-inclusive) are completed immediately:

- Inspecting local living quarters for clues to member's whereabouts
- Questioning cohorts about possible whereabouts
- Inquiring of member's local next of kin or friends about possible whereabouts
- Checking with local disbursing office for member's requested distribution of funds, then inquiring of that banking institution as to recent, large withdrawal of funds
- Inquiring of local hospitals (military and civilian)
- Inquiring of local law enforcement agencies (military and civilian)
- Inquiring of local transportation management office about member acquiring recent long distance transportation arrangements
- Inquiring of local religious and counseling services as to recent visits by member in which overpowering personal concerns might have caused member to leave without authority

If the member's physical whereabouts remains unknown and foul play is suspected, strong consideration should be given to request the assistance of professional criminal investigative agencies. This is of special importance at overseas locations due to the small number of personnel, particularly women, who may fall under these circumstances while outside the continental United States.

DESERTER/ABSENTEE WANTED BY THE ARMED FORCES						1. DATE FORM PREPARED	
2. TO: (Local, State or Federal law enforcement authority as indicated by Military Deserter Information Point)				3. FROM: (Organization or activity and place from which absent. If unauthorized absence occurs in transit, list old and new unit in Item 36 - Remarks)		4. DISTRIBUTION (Attach photograph, if available.)	
6. NAME OF ABSENTEE (Last, First, MI)				6. GRADE OR RATE		7. SEX	
8. RACE				9. PLACE OF BIRTH		10. DATE OF BIRTH	
11. HEIGHT		12. WEIGHT		13. EYES		14. HAIR	
15. DIP CONTROL NUMBER				16. SERVICE		17. SOCIAL SECURITY NO.	
18. CITIZENSHIP				19. MILITARY OCCUPATION			
20. CIVILIAN OCCUPATION				21. PERMANENT RESIDENCE ADDRESS OF ABSENTEE (Include ZIP Code)			
22. DATE AND PLACE OF CURRENT ENLISTMENT				23. DATE AND PLACE OF ENTRY INTO CURRENT PERIOD OF SERVICE			
24. DATE/HOUR OF ABSENCE				25. ADMINISTRATIVE DATE OF DESERTION			
26. ESCAPED OR SENTENCED PRISONER <input type="checkbox"/> YES <input type="checkbox"/> NO Convicted for: _____				27. DISCHARGE STATUS a. DISCHARGED: <input type="checkbox"/> YES <input type="checkbox"/> NO b. SUSPENDED: <input type="checkbox"/> YES <input type="checkbox"/> NO			
OPERATOR'S LICENSE INFORMATION				LICENSE PLATE INFORMATION			
28a. LICENSE NUMBER		b. STATE		c. EXPR DATE		29a. PLATE NO.	
b. STATE		c. EXPR DATE		d. TYPE		29b. STATE	
c. EXPR DATE		d. TYPE		29c. EXPR DATE		29d. TYPE	
VEHICLE INFORMATION							
30a. VEHICLE IDENTIFICATION NUMBER		b. YEAR		c. MAKE		d. MODEL	
e. STYLE		f. COLOR		31. NAME AND ADDRESS OF RELATIVES AND/OR PERSONS KNOWN BY ABSENTEE (Include ZIP Code) (If more space is needed, continue on reverse or on a separate sheet of paper, making reference to this item number.)			
a. NAME				b. ADDRESS (Include ZIP Code)			
(1)							
(2)							
32 (See Footnotes on reverse.) The undersigned states That (he) (she) is a commissioned officer of the United States _____ (Military Department), presently assigned as the Commanding Officer, _____ (Unit from which the Alleged Deserter Absented Himself or Herself), and in the performance of official duties imposed by Department of Defense Directive 1325.2 and _____ (Regulations of the Service concerned which implement DOD Directive 1325.2, e.g., Army Regulations 190-9 and 630-10), (he) (she) has conducted an investigation into the absentee status of _____ (Name and Rank of Alleged Deserter), a member of the United States Armed Forces serving on active duty with _____ (Unit and Service from which the Alleged Deserter Absented Himself or Herself), by questioning (his) (her) unit cohorts, by examining (and verifying) the field service records of said service member which reflect (his) (her) duty status, by requesting the member's next of kin to urge (his) (her) voluntary return to military control if they are aware of (his) (her) whereabouts, by inquiring to the fullest extent possible into the feasibility of other explanations for the member's absence to include sickness, injury, hospitalization, and confinement by civil law enforcement officials (and officially ordered diversion from (his) (her) unit of assignment by querying the member's losing unit (and en route temporary duty unit), the appropriate career management division, (the servicing replacement organization) (and the servicing Military Personnel and Transportation Assistance Office) (and _____) ¹ . That based on the aforesaid investigation, the undersigned has personal knowledge that, on or about _____ (Date), _____ (Name and Rank of Alleged Deserter), did, without authority and with intent to remain away therefrom permanently, absent (himself) (herself) from (his) (her) (unit) (organization) (place of duty), to wit: (See Item 3 Above) located at (See Item 3 Above), in violation of Section 885, Title 10, United States Code and (he) (she) has remained continuously so absent until _____ (Date this Statement is Executed). I state under penalty of perjury (under the laws of the United States of America ²) that the foregoing is true and correct. Executed on _____ (Date).							
33. ORGANIZATION AND INSTALLATION				34. TYPED NAME, GRADE AND TITLE		35. SIGNATURE (All Copies)	

DD FORM 553 (Test)
83 FEB

REPLACES EDITION OF 1 AUG 79 WHICH IS OBSOLETE.

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Figure 11-5A.-Deserter/Absentee Wanted by the Armed Forces, DD Form 553 (front).

36 REMARKS: (List peculiar habits and traits of character, unusual mannerisms and speech; peculiarities in appearance, clothing worn, aliases (names), marks and scars, tattoos, facial characteristics, complexion, posture, build, other SSNs used by individual, or other data that may assist in identification. First known facts, e.g. armed and dangerous, drug user, suicidal tendencies, guards are needed, etc.)

INFORMATION

1. Authority to Apprehend.

a. Any civil officer having authority to apprehend offenders under the laws of the United States, or of a State, territory, commonwealth, possession, or the District of Columbia may summarily apprehend deserters from the Armed Forces of the United States and deliver them into custody of military officials. Receipt of this form and a corresponding entry in the FBI's NCIC Wanted Person File, or oral notification from military officials or Federal law enforcement officials that the person has been declared a deserter and that his/her return to military control is desired, is authority for apprehension.

b. Civil authorities may apprehend absentees (AWOL's) when requested to do so by military authorities.

2. Payment of Reward or Reimbursement for Expenses.

a. **Rewards.** Receipt of this form, or oral or written notification from military authorities or Federal law enforcement officials, prior to apprehension of the individual, that the person is an absentee and that his/her return to military control is desired will be considered as an offer of reward. Persons or agency representatives (except salaried officers or employees of the Federal Government or servicemembers) apprehending or delivering absentees to military control are authorized:

- (1) Payment for apprehension and detention of absentees until military authorities assume custody, or,
- (2) Payment for apprehension and delivery of absentees to a military installation.

b. **Reimbursement for Expenses.** Reimbursement may be made for actual expenses incurred when conditions for payment of a reward cannot be met. If two or more persons perform these services, payment will be made jointly or severally, but total payment to all may not exceed prescribed limitations.

c. **Payment.** Payment will be made to the person or agency representative actually making arrest and detention or delivery by the disbursing officer servicing the military facility to which the absentee is delivered and will be in full satisfaction of all expenses of apprehending, keeping and delivering the absentee. Payment may be made whether the absentee surrenders or is apprehended. Payment will not be made for information leading to apprehension, nor for apprehension not followed by return to military control. Both reward and reimbursement may not be paid for the same apprehension and detention or delivery.

3. Individual Claims He/She Is not Absent Without Authority. When a detained individual claims that he/she is not absent without leave and does not have the papers to prove his/her claim, the apprehending person or agency representative should communicate directly by the most rapid means available, with the nearest military installation manned by active duty personnel. When necessary, communicate directly (telephone or telegraph) with the Deserter Information Point of the military service concerned.

- a. **US Army.** United States Army Deserter Information Point (USADIP), Fort Benjamin Harrison, IN 46249, telephone collect: Area Code (317) 542-3355.
- b. **US Navy.** Commander, Naval Military Personnel Command (NMPC-843), Washington, D.C. 20370, telephone: Area Code (800) 336-4974 (In Va., Call (800) 572-0266).
- c. **US Marine Corps.** Commandant, US Marine Corps, Code MPH-57, Washington, D.C. 20380, telephone collect: Area Code (202) 694-2180/8526.
- d. **US Air Force.** USAF Manpower Personnel Center, Randolph AF Base, Texas 78148, telephone collect: Area Code (512) 652-5118/2148.

FOOTNOTES:

¹ For use only when a servicemember fails to report to a gaining unit of assignment during a permanent change of station.

² For use only when statement is executed outside the United States, its territories, possessions and commonwealths.

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Figure 11-5B.-Deserter/Absentee Wanted by the Armed Forces, DD Form 553 (back).

In foreign ports, where the aid of the civil authorities is required, the CO must, in addition to the previous actions, furnish a copy of a DD Form 553 to the nearest consulate of the United States.

When a member's period of unauthorized absence is less than 24 hours, make a page 13, Administrative Remarks, NAVPERS 1070/613, entry to the service record with the exact hours and date(s) of the authorized absence's beginning and end and circumstances of the unauthorized absence.

If the member has been absent over 24 hours, prepare and distribute the Record of Unauthorized Absence, NAVPERS 1070/606, under paragraph 90435 and table 9-4-38 of the *Navy Pay and Personnel Procedures Manual* (PAYPERSMAN), NAVSO P-3550.

On the 10th day of absence, the disbursing officer must stop all allotments and the next of kin must be notified in the following format with a copy provided to the Reserve chaplain nearest the absentee's home of record according to BUPERSNOTE 1600.

"I regret the necessity of informing you that your (son, daughter, husband, wife, or other), (insert rate and full name of absentee) who enlisted in the Navy on (date) and was attached to (name of ship or station) has been on unauthorized absence since (date). Should you know of (his or her) whereabouts, please urge (him or her) to surrender to the nearest naval or other military activity immediately. The gravity of the offense increases with each day of absence. At this time all pay and allowance, including allotments, have been suspended pending return to Navy jurisdiction. Should (he or she) remain absent for 30 days, we will declare (him or her) a deserter. Information will be provided to the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC) Wanted Persons File, which is available to all federal, state, and local law enforcement agencies."

DESERTERS

Desertion is from the time the unauthorized absence commenced. In cases of failure to return from leave or liberty, the desertion is from the time leave or liberty expired.

Commands must take the following action to declare an enlisted member a deserter:

- Using the format in the *Naval Military Personnel Manual* (MILPERSMAN) 3430250, prepare and submit the Declaration of Desertion message no later

than the 31st day of a member's unauthorized absence. If the 31st day falls on a weekend or holiday, then the message must be submitted on the first workday following the member's 30th day of unauthorized absence. This report is assigned Report Control Symbol NMPC 1600-3, Report of Declaration of Desertion.

- Prepare an Administrative Remarks, NAVPERS 1070/613, page 13 service record entry containing all the information in the Declaration of Desertion message.

- Prepare the DD Form 553 (figs. 11-5A and 11-5B) on the day of declaration and mail to the Chief of Naval Personnel (PERS-843), Washington, DC 20370-5000. (Leave the Distribution block blank.) his report is assigned Report Control Symbol NMPC 1600-1. Prompt and accurate completion of the DD Form 553 is extremely important. To enter the member into the FBI NCIC Wanted Persons File, PERS-843 must receive the DD Form 553. Until a member is entered in the NCIC, no efforts will be made to locate and apprehend the member. Include a photograph of the deserter if at all possible.

- In foreign ports, where the aid of the civil authorities is required, the CO must, in addition to the previous actions, furnish a copy of the DD Form 553 to the nearest consul of the United States.

APPREHENSION OF ABSENTEES AND DESERTERS

Members of the armed forces may apprehend absentees and deserters under the circumstances prescribed by Article 7b of the UCMJ and R.C.M. 302(b) of the *Manual for Courts-Martial, United States*, 1984. Naval personnel do not normally apprehend suspected absentees and deserters outside the confines of military installations.

The responsibility for coordinating apprehension and return of Navy deserters rests with the Deserter Branch of the Bureau of Naval Personnel (PERS-843) and its component activities, the Navy Absentee Collection Units (NACUs). They initiate actions and coordinate efforts with civil law enforcement authorities in locating and apprehending Navy deserters.

The responsibility for coordinating apprehension and return of absentees normally rests with the unit CO. Units may request assistance from PERS 843 or directly from the NACUs.

Any military installation manned by active duty members will receive absentees and deserters.

Immediate action must be taken to transfer members to the nearest installation of their branch of service having facilities to process absentees and deserters.

The Deserter Branch of the Bureau of Naval Personnel (PERS-843) manages the Navy's Deserter Apprehension Program. The Navy Deserter Information Point (DIP), a component of PERS-843, operates on a 24-hour basis. Responsibilities include control, accounting, and dissemination of information concerning members administratively classified as deserters, as well as providing timely and complete deserter information to civil law enforcement agencies, and initiating the return of deserters apprehended by civil authorities. The NACUs, under the direct control of PERS-843, are responsible for the collection and delivery of absentees and deserters to the proper command and for liaison with civil law enforcement agencies. MILPERSMAN 3430100 lists the cities w-here NACUs are located.

RETURN OF ABSENTEE

When an absentee returns to military control on board his or her parent command, that command must comply with MILPERSMAN 3430150 if the member was absent less than 24 hours. In the case of unauthorized absences of more than 24 hours, prepare and distribute the Record of Unauthorized Absence, NAVPERS 1070/606, within 5 working days as specified in the PAYPERSMAN, NAVSO P-3050. When the member returns after 10 days' absence, notify the next of kin of the member's return, with a copy of the letter to the Reserve chaplain who was originally notified. Appropriate disciplinary action must be taken promptly.

When an absentee returns to a unit other than his or her parent command, that command must contact the member's parent command immediately, requesting confirmation of the member's status. In compliance with Article 31(b) of the UCMJ, request from the absentee and the parent command the date and hour of absence.

In coordination with the supporting personnel support detachment (PERSUPPDET), return the surrendered to his or her parent command by first available means of transportation. If an absentee's parent command is outside of the 48 contiguous United States or is deployed, comply with the *Issuance of the Navy Passenger Transportation Manual* (PTM), NAVMILPERSCOMINST 4650.2A, to obtain overseas routing instructions and information on passport/visa

requirements. Passenger reservation requests (PRRs) must clearly state that the member is traveling under technical arrest orders (TAOs) in a disciplinary status or failed to report in compliance with funded (PCS, TEMDU or TEMADD) orders.

- Surrendered traveling in connection with funded (PCS/TEMU/TEMADD) orders. The orders will be endorsed using Detaching (Departing) Endorsement to Orders - (Officer-Enlisted) (OCR), NAVCOMPT 3067, and Report (Arrival) Endorsement to Orders - (Officer-Enlisted) (OCR), NAVCOMPT 3068. The following statement is included in the Remarks section of NAVCOMPT 3067:

"I understand that all expenses and travel costs in connection with this transfer that are in excess of the original cost of my PCS/TEMU/TEMADD orders will be charged against my pay record."

- (1) Include signature, rate, and social security number of absentee. Include signature, name, and grade of witness.

- (2) In this situation, the PERSUPPDET must issue a U.S. government transportation request (GTR) subject to checkage to cover transportation costs according to NAVMILPERSCOMINST 4650.2A. When possible, provide a cash advance to a member without funds to cover local transportation from the transportation terminal to his or her ultimate destination. Prepare a Pay Adjustment Authorization, DD Form 139, to make sure the member's pay account is adjusted for the cost of travel.

- If the member is not in possession of the original or copies of funded orders, then TAOs must be issued and an Administrative Remarks, NAVPERS 1070/613, page 13 entry will indicate that the member is not in possession of funded (PCS/TEMU/TEMADD) orders. TAOs are issued using Standard Transfer Order, NAVCOMPT 536, according to the *Enlisted Transfer Manual* (TRANSMAN), NAVPERS 15909D, chapter 23. Clearly indicate on the TAOs Transferred in a Disciplinary Status and include the following statement:

"(Date). I acknowledge receipt of these orders. I have read their contents and understand that failure to comply with these orders will render me liable to charges of further unauthorized absence, disobedience of orders, or manifest desertion as the circumstances may warrant. I also understand that all expenses and travel costs in connection with this transfer will be charged against my pay records."

- Prepare a page 13 entry, providing as much information as possible. Add the following statement:

“(Date): Written technical arrest orders were issued and delivered this date transferring (name of absentee) to (name of parent command) in a disciplinary status in (his or her) own custody to report not later than (hour and date required to report). (Name of absentee) has acknowledged in writing the receipt of such orders.”

- Provide the original TAO, pay adjustment authorization (PAA), and NAVPERS 1070/613 to the member and forward a signed copy of each to the parent command. If there is an intermediate command, provide a copy of the TAO to that command.

Make sure the absentee’s appearance does not reflect discredit on the naval service.

RETURN OF DESERTERS

In addition to the procedures required for the return of absentees in MILPERSMAN 3430200, the activity to which an administratively declared deserter returns to military control must transmit a message, using the format in MILPERSMAN 3430300, to the Bureau of Naval Personnel (PERS-843). This report is assigned Report Control Symbol NMPC 1600-2 (Report of Return of Deserter).

A declared deserter discharged *in absentia* as authorized by the Chief of Naval Personnel (PERS 83) is considered returned to military control for administrative purposes on the date before the actual discharge date. The discharging activity must transmit a Returned to Military Control message to PERS-843 for the purpose of clearing the deserter off the active deserter files. Prepare the message using the format in MILPERSMAN 3430300. The Remarks section of the message must indicate the authority used for discharge *in absentia* and the actual date of discharge.

Upon the member’s return to the parent command, it is imperative that the command verify that the message report has been submitted so that the member may be taken out of deserter status and removed from the FBI NCIC Wanted Persons File. If not previously submitted by an intermediate activity, the member’s parent command must immediately send the message as indicated previously to PERS-843.

The parent command or command to which the member is assigned for disciplinary action or disposition must complete and distribute the Record of Unauthorized Absence, NAVPERS 1070/606,

according to paragraph 90435 and table 9-4-38 of the PAYPERSMAN, NAVSO P-3050.

Detailed guidelines on the return of deserters are contained in MILPERSMAN 3430300.

POWER OF ATTORNEY

A power of attorney is a legal document by which you give another person full, complete power to act for you either in some particular transaction or in any and all transactions. The person so appointed is known as your attorney-in-fact. The actions taken by your legally appointed attorney-in-fact are as binding on you as if you had personally acted in the matter. You do not need to be consulted before your attorney-in-fact takes action.

In a few instances, powers of attorney maybe very useful, particularly where transactions are needed and you are wholly unable to be at the required place. On the other hand, a power of attorney given simply to satisfy a whim or because you feel it is expected of you is the surest and most direct route to disaster.

The two power of attorney categories are limited power of certain named transactions and a general power of attorney authorizing the attorney-in-fact to act for you in any transaction, regardless of type, amount, or consequences involved. Under a general power of attorney, your name may be pledged to loans or to mortgages and your property may be sold for any amount regardless of its worth. A power of attorney may not be used to delegate authority to another to act on matters of judgment about your retired pay account, such as electing to waive your retired pay to have military service credited under the Civil Service Retirement Act or electing to participate in the Survivor Benefit Plan.

A power of attorney may not be needed, or it may be preferable for you to execute a limited or a special power of attorney with authority for the attorney-in-fact, to perform certain stated acts under certain stated conditions and no more. It maybe desirable to limit the duration of your attorney-in-fact’s authority.

Before executing a power of attorney, consult your legal assistance officer, the nearest naval legal service office (NLSO), or other qualified legal counsel. If it is decided that a power of attorney is needed, visit your NLSO to have a power of attorney typed with the appropriate information.

Inform your next of kin or dependents if you have granted a power of attorney and, if so, to whom. Legal authority granted in a power of attorney is revoked by

the death of either the grantor or the grantee, by any time limit set by the document itself, or by specific revocation. If you have an outstanding power of attorney that has served its purpose, you should seek its return. Additionally, if you have an outstanding power of attorney that has been placed in public records and you have any reason to believe that the powers granted might be abused, talk with your legal assistance officer or civilian attorney about obtaining surrender of the original power of attorney and entering a specific revocation in the proper public records.

INDEBTEDNESS

The policy of the Department of the Navy is to promote habits of thrift and to encourage all members of the naval service to conduct their financial affairs in such a manner as to reflect credit upon the naval service. From inception to final settlement, the responsibility for an obligation rests solely with the creditor and the debtor. The extent to which COs may cooperate with creditors is limited to administrative referral of correspondence to the member. The CO should make sure the member concerned communicates his or her intentions in the matter to the creditor. However, under the Fair Debt Collection Practices Act (Public Law 95- 109), contact by a debt collector with third parties, such as COs, for the purpose of aiding debt collection is prohibited without prior consent of the debtor or without a court order.

The CO should make sure members of the command have been instructed in the provisions of MILPERSMAN 6210140. Disinterested third party counseling should be made available by each command to assist members with problems.

Thrift is not only a virtue but, for most people, a necessity. The way in which members handle their private financial affairs provides a reliable indication of their general character and trustworthiness.

Before acceptance of any credit plan, members should practice the following:

- Evaluate their financial capabilities and set up a budget that will prevent hopeless entrapment in overburdening and ever-increasing debts.
- Consult with a legal assistance officer when contemplating large purchases on credit to avoid commitments that may be difficult or impossible to carry out.
- Be wary of the high-pressure salesperson.

- Think carefully and seek advice before signing an agreement or contract. Never sign a blank contract and always multiply the number of payments by the amount to determine the total payment. Note particularly the penalty clauses.

Failure to pay just debts or repeatedly incurring debts beyond a member's ability to pay is evidence of irresponsibility and may jeopardize the member's security clearance status, advancement status, duty assignment, qualification for reenlistment or extension of enlistment, and in aggravated circumstances may become grounds for disciplinary action or administrative discharge.

A savings maybe realized by setting funds aside to provide for cash purchases through civilian military stores. Encourage members to take advantage of the saving, counseling, and lending services provided by credit unions organized by and for Department of the Navy civilian and military personnel.

Instruct your members on the use of the Statement of Full Disclosure forms. Each member desiring to obtain credit or execute a loan should receive beforehand from the legal assistance officer or other source of supply two copies of the Certificate of Compliance and Standards of Fairness (one copy for each party to the contract). It should be noted that a seller or lender may present the information provided for in the Statement of Full Disclosure form through any different form as most convenient to them as long as all the information is disclosed and a copy provided to the borrower or purchaser.

Members who do not seek or heed advice beforehand or who otherwise encounter difficulties in paying their debts should be encouraged to consult with a legal assistance officer as prescribed in the *Manual of the Judge Advocate General*, JAGINST 5800.7C.

Bankruptcy is not an easy way out of indebtedness. The Navy neither encourages nor discourages the filing of a petition in bankruptcy. The circumstances prompting bankruptcy proceedings are considered officially since they may reflect adversely on the military character of the petitioner. A discharge in bankruptcy does not give a member immunity from prosecution for offenses of failure to pay just debts committed before a petition of bankruptcy.

Upon receipt of an indebtedness complaint, the CO must make a determination about the creditor. If it is determined that the debt collector is in violation of the Fair Debt Collection Practices Act or a state statute regulating debt collection practices, the correspondence

must be returned to the sender, along with a letter similar to figure 11-6

If the creditor is in violation of the Fair Debt Collection Practices Act or a state statute regulating debt collection practices, the CO should send to the creditor a letter similar to figure 11-7.

If the creditor is not in violation of the Fair Debt Collection Practices Act or a state statute regulating debt collection practices and complied with the Standards of Fairness, the CO should refer the correspondence to the member concerned, have the member communicate in a proper and timely manner with the creditor regarding his or her intentions in the matter, and send a letter similar to figure 11-8 to the creditor.

If the creditor has not satisfactorily met the requirements for full disclosure or signed the Certificate of Compliance, the CO should send to the creditor a letter similar to figure 11-9. The creditor's Correspondent should be returned and no further action should be taken by the CO or other officials of the Navy Department until the Standards of Fairness are met and the creditor sends to the CO a complete Statement of Full Disclosure and a signed Certificate of Compliance.

When a creditor's letter is received via a Member of Congress, a letter similar to figure 11-10 should be sent. When commands receive letters from creditors desiring to contact a member about indebtedness and the member is not or is no longer attached to the command, the creditor should, unless a different course of action is clearly indicated, be advised of the member's new duty station address or that the member is not with the command and that the creditor might obtain the member's duty station address by writing to the locator service of the Chief of Naval Personnel(PERS-312D), enclosing \$3.50 (subject to change) as a fee for the service. The member's home address may not be released.

Requests received to furnish information concerning the personal rating of a member of the naval service should be courteously refused. The policy of the Department of the Navy is to require that replies to such inquiries be limited to a verification that the member is in the naval service and to a statement of the member's duty station address and basic pay. A letter similar to figure 11-11 is applicable in this situation. The requester should be further informed that information concerning a member's credit rating maybe obtained from civilian agencies that have been established for that purpose.

Dear Sir/Madam:

This is in reply to your letter of (date) concerning the alleged indebtedness of (grade/rate, name).

The policy of the Department of the Navy is that members of the naval service shall honorably discharge their just and fair debts. The Department of the Navy, however, has no authority to enforce settlement of any private claims made against members of the naval service, nor is adjudication of disputed claims a matter under the cognizant of the Department of the Navy.

The Navy will forward complaints of indebtedness to members advising them to communicate directly with the claimant regarding their intention in the matter, provided that the letter of indebtedness complies with statutory and regulatory requirements.

A careful review of the contents of your correspondence suggests that it is in violation of (statute [federal or state or both]), in that (brief description of apparent violation; that is, correspondent is a member of the class of persons prohibited from contacting third parties). Therefore, the correspondence is returned to you without action.

You are advised to communicate directly with (grade/rate, name) about this matter.

Sincerely,

Enclosure(s)

Figure 11-6.-Letter of indebtedness to debt collector in violation of the Fair Debt Collection Practices Act or a state statute.

Dear Mr./Miss./Mrs./Ms. (surname):

This is reply to your letter of (date) concerning the alleged indebtedness of (grade/rate, name).

The policy of the Department of the Navy is that members of the naval service shall honorably discharge their just and fair debts. The Department of the Navy, however, has no authority to enforce settlement of any private claims made against members of the naval service, nor is adjudication of disputed claims a matter under the cognizant of the Department of the Navy.

Department of Defense directives require that as a condition precedent to forwarding complaints of indebtedness to a service member the enclosed forms must be completed and the Standards of Fairness complied with. If, after review, it appears that the provisions of the Department of Defense directives have been fully satisfied the matter will be referred to the service member for reply directly to you.

Sincerely,

Encl:

(1) Standards of Fairness and forms for a Statement of Full Disclosure and a Certificate of Compliance

Figure 11-7.-Letter of indebtedness creditor in violation of the Fair Debt Collection Practices Act or a state statute.

Dear (fill in):

This is in reply to your letter of (date) concerning the alleged indebtedness of (grade/rate, name).

In view of your letter, the service member has been advised to communicate directly with you regarding (his, her) intentions in the matter. It is hoped that the above action will result in the matter being satisfactorily resolved.

Sincerely yours,

Figure 11-8.-Letter of indebtedness creditor not in violation of the Fair Debt Collection Practices Act or a state statute.

The CO may furnish the member with a statement of service, including a statement of pay and allowances. this information should be sufficiently complete to meet the needs of the member, such as those in connection with home mortgages or purchase applications.

The Chief of Naval Personnel receives letters from various sources in foreign territories and countries regarding alleged indebtedness or related matters

concerning naval members. In the interest of maintaining harmonious relationships with citizens of other nations, these letters are forwarded to the CO who should quickly dispose of these cases and ensure satisfactory and positive conclusion of the matter. If the situation cannot be disposed of satisfactorily or permanently before the member's departure from the foreign port or station in question, a report setting forth all pertinent facts should be made to the senior officer present afloat (SOPA) or other authority, as appropriate.

Dear Mr./Miss/Mrs./Ms. (surname):

This is in reply to your letter of (date) concerning the alleged indebtedness of (grade/rate, name).

After a careful review of the contents of your correspondence, it does not appear that the Full Disclosure test and the Standards of Fairness requirement have as yet been met. (Specify particulars to the extent appropriate.) This command is not permitted to assist you until the Standards of Fairness have been complied with or until such time as you have obtained a civil judgment in a court of competent jurisdiction that complies with the provisions of the Soldiers' and Sailors' Civil Relief Act.

By copy of this letter the Chief of Naval Personnel is being advised of the foregoing.

Sincerely yours,

Encl:

(1) correspondence in this case

Copy to:

CHNAVPERS

Figure 11-9.-Letter of indebtedness; creditor has not met the requirements for full disclosure or signed the Certificate of Compliance.

My dear Mr./MissMrs./Ms. (Congressman/Congresswoman):

This is in reply to your letter of (date) concerning the alleged indebtedness of (grade/rate, name), United States Navy.

Navy personnel are well indoctrinated in the Department of the Navy's policy of expecting all members of the naval service to discharge their acknowledged debts and just obligations. The Department desires to cooperate and be of assistance to persons who are experiencing difficulty in collecting from naval personnel acknowledged personal debts. There is no legal pay in matters of personal indebtedness. Cooperation is restricted to bringing the matter of delinquency in indebtedness to the attention of the member concerned, with the request that he or she communicate with the creditor regarding his or her intentions in the matter.

Department of Defense directives require that as a condition precedent to forwarding complaints of indebtedness to a service member the enclosed forms must be completed and the Standards of Fairness complied with. Your constituent should be advised to send the forms to the Commanding Officer (fall-in).

Sincerely yours,

Encl:

(1) Standards of Fairness and forms for a Statement of Full Disclosure and a Certificate of Compliance

Figure 11-10.-Letter of Indebtedness received via a Member of Congress.

Dear Sir/Madam:

This in reply to your letter of (date) requesting certain information relative to the credit rating of (grade/rate, name), United States Navy.

(Grade/rate, name) is currently a member of the naval service on active duty. His/Her official address is (fill in). His/Her basic rate of pay is (fill in) per month. Current policy of the Department of the Navy prevents finishing further information in this regard. If more detailed data is required, it is suggested that it be requested directly from (grade/rate, name) or from credit bureaus or other commercial rating agencies.

It is hoped that the foregoing information satisfactorily answers your inquiry.

Sincerely yours,

Figure 11-11. Response to letter of request for information relative to a member's credit rating.

The following action should be taken in aggravated situations of nonpayment of legal debts:

- A CO's action in the case of an officer should be governed by the article on performance of officer members.

- Enlisted members should be counseled under the provisions for discharge of enlisted members for reasons of misconduct. When considered to be in the interest of systematizing the management of the member's financial affairs, it maybe suggested that the member submit to the CO a statement of monthly finances and outstanding obligations.

- COs should submit to the Chief of Naval Personnel (PERS-8) a full report of circumstances in connection with any petition in bankruptcy, discharge in bankruptcy, or approved wage earner's plan concerning any member of their command.

CONGRESSIONAL CORRESPONDENCE

All communication from a United States Senator, a Representative in Congress, or other official concerning personnel should receive a prompt, courteous, and complete reply even though the nature of the reply may necessarily be unfavorable.

Send a final or interim reply within 5 workdays from the time a congressional inquiry reaches the action officer's desk. Interim replies take several forms:

- If the interim reply gives an estimated date for the final reply, only unusual developments require further interim replies.

- If the interim reply doesn't give an estimated date for the final reply, send more interim replies every 10 workdays until a date for final reply can be set. Send an interim reply in less than 10 workdays when significant information develops.

- If you have announced a date for the final reply but cannot meet it, then by that date send an interim reply that explains the added delay and, if possible, sets a new date for the final reply.

Send a blind copy of your final reply and substantive interim replies to the Office of Legislative Affairs, Washington, DC 20350. Also send blind copies to other Washington headquarters as good judgment dictates.

A courtesy copy is an extra copy that accompanies the original. Always send a courtesy copy when responding to a congressional inquiry.

The requirement for correctness of replies cannot be overemphasized. Guidance concerning congressional correspondence may be obtained from the Military Correspondence and Congressional Liaison Office (PERS-3C). A copy of the inquiry and reply should be promptly sent to the Chief of Naval Personnel (PERS-3C) and the Chief of Legislative Affairs (Code LA-23).